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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Beverly Cusick Taylor

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JEAN M. MACHELEDT

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SUITE B100

FORT COLLINS, CO 80525-3133

EXAMINER

NGUYEN, CAMTU TRAN

ART UNIT

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MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,320	Applicant(s) TAYLOR, BEVERLY CUSICK	
	Examiner Camtu T. Nguyen	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/27/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Election

Applicant's election with traverse of Group I, claims 1-14, in the reply filed on 4-9-2008 is acknowledged. The traversal is on the ground(s) that applicant received no voice message regarding the restriction requirement. This is not found persuasive because such ground did not address why Groups I & II should not be restricted.

In response specifically to applicant's traversal ground(s), the Examiner regrets an unsuccessful call to applicant as it resulted in no election. The Examiner might have mis-dialed applicant's phone number. In future attempt to reach applicant, the Examiner, for sure, will pay extra attention to handling the dialing out.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 9 recite the limitation "said fasteners" in lines 8-9, 5, 3, respectively.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Winthrop et al (U.S. Patent No. 5,891,187).

Winthrop et al discloses wrap-around pad (10) comprising an upper torso (28, 30) garment, a lower torso (20, 22, 24, 26) garment, and a plurality of fasteners (21, 23, 25, 27, 29, 31, 33, 35, 37, 39).

With regards to claims 1 & 12 reciting the torso garments are elasticized, the Winthrop et al reference teaches the garments (20, 22, 24, 26, 28, 30) are trademarks THINSULATE, GORE-TEX, neoprene, of which materials having the inwardly facing surface resisting slippage when donned, and possessing elasticity.

With regards to claim 1 reciting the plurality of pieces are elasticized, the Winthrop et al reference teaches the fasteners (21, 23, 25, 27, 29, 31, 33, 35, 37, 39) are VELCRO, of which material thereof is elasticized.

With regards to claims 2-3 & 13 reciting the limb garment, the Winthrop et al reference teaches a head piece (60).

With regards to the claim 10 reciting the objectives of the operative therapeutic configuration, such is a mere functional recitation and a mere statement of intended use. Clearly, the Winthrop et al reference would meet such objectives.

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With regards to claim 11 reciting a topically-applied therapeutic device of a thermally regulated pack, the Winthrop et al reference teaches heating/cooling pad (12).

Claims 1-3, 5-10, 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips, Sr. et al (U.S. Patent No. 4,843,647).

Phillips, Sr. et al discloses garment system comprising an upper torso garment (10), a lower torso garment (11), and a plurality of elasticized pieces (12, 13, 34) and fasteners (41) releasably applied to the garments (10, 11).

With regards to claim 2-3 & 13 reciting the limb garment, the Phillips, Sr. et al teaches a head piece (34) garment.

With regards to claim 5 reciting a waistband with size-tailoring indicia, Figure 8 in the Phillips, Sr. et al illustrates a waistband (61) with size-tailoring indicia (62)

With regards to claim 6 reciting a plurality of position markers, Figure 8 of the Phillips, Sr. et al illustrates position marks (74, 75, 77) to the lower torso garment (11).

With regards to claims 7 & 14 reciting at least one of the elasticized pieces (12, 13, 34) comprises an at least partially split-strap, Figures 4 & 5 in the Phillips, Sr. et al reference illustrates the elasticized piece (34) comprises split-strap (42) having 1st and 2nd opposing extensions.

With regards to claim 8 reciting a 3rd & a 4th extensions, Figure 5 in the Phillips, Sr. et al illustrates a 3rd extension (35) and a 4th extension which is the back of piece (34).

With regards to claim 9 reciting the outwardly facing surface comprises a woven fabric & the under layer comprises a polyester-polyurethane foam, the Phillips, Sr. et al reference teaches

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the construction of its garment system includes an outermost woven fabric layer (16) and an under polyurethane layer (17). With regards to claim 9 reciting the releasable fasteners comprise hooks mating loops areas, Figure 4 in the Phillips, Sr. et al illustrates hooks-n-loops fasteners (41).

With regards to the claims 10 & 14 reciting the objectives of the operative therapeutic configuration, such is a mere functional recitation and a mere statement of intended use. Clearly, the Phillips, Sr. et al reference would meet such objectives.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

U.S. Patent 4,843,647 (Phillips, Sr. et al) does not disclose the upper torso garment (10) comprises a front & back panels releasably secured at the shoulder area & at left & right sides of the panels.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Camtu T. Nguyen/
Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772